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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELEKTRA PRINTZ GORSKI, an individual,

Plaintiff,

v.

WHOLE FOODS MARKET, INC., and WHOLE FOODS MARKET GROUP, INC.

Defendants.

CASE NO. 15-cv-02983-AJN

DECLARATION OF ELEKTRA PRINTZ GORSKI IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND MOTION TO STRIKE

ELEKTRA PRINTZ GORSKI, hereby declares and states under penalty of perjury as prescribed by 28 U.S.C. §1746:

1. I am the owner of the LETTUCE TURNIP THE BEET trademark ("LTTB Mark"). The facts set forth in this declaration are known personally by me to be true or based upon a diligent review of my books and records and if called upon as a witness, I could and would competently testify thereto. I submit this declaration in opposition to Defendants Whole Foods Markets, Inc. ("WFMI") and Whole Foods Market Group, Inc.'s ("WFMG") (collectively, "Defendants") motion to dismiss the complaint against WFMI for lack of personal jurisdiction

under Federal Rule of Civil Procedure Rule 12(b)(2) and motion to strike certain improper portions of the complaint under Federal Rule of Civil Procedure Rule 12(f).

2. According to the "Fast Facts" on Defendants' website, Whole Foods Market is ranked as the eighth largest food and drug store in the United States. There are at least 410 Whole Foods Market stores, with more than 88,000 employees. There are Whole Foods Market stores in at least forty-two (42) states. In 2014, Whole Foods Market made $14.2 billion in sales and was ranked #218 on the Fortune 500 list. The Whole Foods Market headquarters is located in Austin, Texas. A printout of the "Fast Facts" posted by Defendants on the Whole Foods Market website is attached hereto as **Exhibit 1**.

3. Recently, the New York Department of Consumer Affairs accused New York City Whole Foods Market stores of overstating the weight of prepackaged foods. In response, WFMI admitted that there were pricing issues at its New York City stores and announced that it will increase training in stores across the country to fix the pricing issues. An article entitled "Whole Foods own up overcharging of packaged goods" printed by Reuters is attached hereto as **Exhibit 2**.

4. On March 7, 2015, I sent a cease and desist letter via email to Defendants demanding that they immediately cease their unauthorized use of the LTTB Mark.

5. On March 27, 2015, I received an email response to my cease and desist letter from counsel for Defendants ("March 27th Email"). In their response, Defendants did not put "Settlement Communication Pursuant to FRE 408" in the subject line or body of the March 27th Email.

6. In fact, Defendants *never* used the word "settlement" with me prior to the commencement of this action.

7. In their March 27th Email, Defendants advised me that all stores were instructed to cease their sale of the infringing products and confirmed that all Whole Foods Market stores complied.

8. Despite assurances from Defendants' counsel that the infringing merchandise was no longer being offered for sale, it was still being offered for sale at Defendants' stores.

9. Indeed, on March 29, 2015, two separate customers purchased t-shirts bearing counterfeits and infringements of the LTTB Mark from the Whole Foods Market store located in Charlotte, North Carolina. A customer also purchased infringing merchandise from that location on April 7, 2015.

10. Equally egregious still, in their March 27th Email, Defendants made misleading and false statements regarding the extent of their sales of the infringing merchandise.

11. Defendants admitted to selling eighteen (18) shirts bearing the LTTB Mark, or a mark substantially similar thereto, at its store "in one" Virginia Beach, Virginia location.

12. Defendants further alleged that, "no other products bearing the phrase 'Lettuce turnip the beet' were sold or offered for sale by Whole Foods Market."

13. I have information that shows Defendants likely distributed shirts bearing counterfeits and infringements of the LTTB Mark in at least six (6) different stores in various states.

14. Wherefore, it is respectfully requested that Defendants' motion to dismiss and motion to strike be denied.

Dated: July 20th, 2015

ELEKTRA PRINTZ GORSKI